

By: Hill

H.B. No. 3186

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the compensation of a municipality for the use of public
3 right-of-way by providers of local exchange telephone service.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 283.002, Local Government Code, is
6 amended to read as follows:

7 Sec. 283.002. DEFINITIONS. In this chapter:

8 (1) [~~"Access line":~~

9 ~~(A) means, unless the commission adopts a different~~
10 ~~definition under Section 283.003, a unit of measurement~~
11 ~~representing:~~

12 ~~(i) each switched transmission path of the~~
13 ~~transmission media that is physically within a public right-of-way~~
14 ~~extended to the end-use customer's premises within the~~
15 ~~municipality, that allows the delivery of local exchange telephone~~
16 ~~services within a municipality, and that is provided by means of~~
17 ~~owned facilities, unbundled network elements or leased facilities,~~
18 ~~or resale;~~

19 ~~(ii) each termination point or points of a~~
20 ~~nonswitched telephone or other circuit consisting of transmission~~
21 ~~media located within a public right-of-way connecting specific~~
22 ~~locations identified by, and provided to, the end-use customer for~~
23 ~~delivery of nonswitched telecommunications services within the~~
24 ~~municipality; or~~

1 ~~(iii) each switched transmission path within a~~
2 ~~public right-of-way used to provide central office-based PBX-type~~
3 ~~services for systems of any number of stations within the~~
4 ~~municipality, and in that instance, one path shall be counted for~~
5 ~~every 10 stations served; and~~

6 ~~(B) may not be construed to include interoffice~~
7 ~~transport or other transmission media that do not terminate at an~~
8 ~~end-use customer's premises or to permit duplicate or multiple~~
9 ~~assessment of access line rates on the provision of a single~~
10 ~~service.~~

11 ~~(2)]~~ "Certificated telecommunications provider" means a
12 person who has been issued a certificate of convenience and
13 necessity, certificate of operating authority, or service provider
14 certificate of operating authority by the commission to offer local
15 exchange telephone service.

16 (2) ~~[(3)]~~ "Commission" means the Public Utility Commission
17 of Texas.

18 ~~[(4) "Consumer price index" means the annual revised~~
19 ~~consumer price index for all urban consumers for Texas, as~~
20 ~~published by the Federal Bureau of Labor Statistics.]~~

21 (3) ~~[(5)]~~ "Local exchange telephone service" has the
22 meaning assigned by Section 51.002, Utilities Code.

23 (4) ~~[(6)]~~ "Public right-of-way" means the area on, below,
24 or above a public roadway, highway, street, public sidewalk, alley,
25 waterway, or utility easement in which the municipality has an
26 interest. The term does not include the airwaves above a
27 right-of-way with regard to wireless telecommunications.

1 SECTION 2. Section 283.006, Local Government Code, is
2 amended to read as follows:

3 Sec. 283.006. FEE REQUIREMENT FOR USE OF RIGHT-OF-WAY. [~~a~~]
4 Notwithstanding any other law, a certificated telecommunications
5 provider that does not use a public right-of-way within the
6 municipality may not be required to pay franchise fees,
7 right-of-way fees or any other fee or other compensation, other
8 than a fee or compensation excluded from the "base amount" under
9 Section 283.053(a), directly to the municipality to provide local
10 exchange telephone service in the municipality.

11 [~~(b) This section does not affect the number of access lines
12 counted and reported to the commission under Section 283.055.~~

13 [~~(c) The commission shall adopt rules to determine the method
14 of payment and to ensure that access line fees are paid on a
15 competitively neutral and non-discriminatory basis by certificated
16 telecommunications providers that provide more access lines than
17 they purchase from an underlying provider of resold services or
18 unbundled network elements.]~~

19 SECTION 3. Section 283.053, Local Government Code, is
20 amended to read as follows:

21 Sec. 283.053. BASE AMOUNT. (a) In determining a
22 municipality's "base amount" under this section, pole rental fees,
23 special assessments, and taxes of any kind, including ad valorem or
24 sales and use taxes, or other compensation not related to the use of
25 a public right-of-way, are not included.

26 (b) For purposes of determining the amount of a
27 municipality's right-of-way fee under Section 283.055, the "base

1 amount" for a municipality not described by another subsection is
2 the total amount of revenue received by the municipality in
3 franchise, license, permit, and application fees and in-kind
4 services or facilities from certificated telecommunications
5 providers in 2002 [~~1998~~] within the boundaries of the municipality,
6 including all newly annexed areas. The base amount prescribed
7 under this subsection shall include the municipal fee rate
8 escalation provisions and the value of in-kind services or
9 facilities received in 2002 [~~1998~~] in accordance with Subsection
10 (f) specifically prescribed in applicable agreements or ordinances
11 effective or adopted by January 12, 2003 [~~1999~~], unless the
12 governing body of the municipality elects otherwise. However, that
13 additional compensation may not become part of the base amount
14 before it becomes effective under the existing franchise agreement
15 or ordinance.

16 (c) The base amount for a municipality located in a county
17 with a population of less than 25,000 or a municipality that either
18 did not have an effective franchise agreement or ordinance on
19 January 12, 2003 [~~1999~~], or was not in existence on that date shall
20 be, at the election of the governing body of the municipality, equal
21 to:

22 (1) an amount not greater than the statewide average
23 fee per line for each category of access line of the certificated
24 telecommunications provider with the greatest number of access
25 lines in that municipality, multiplied by the total number of
26 access lines in each category located within the boundaries of the
27 municipality on December 31, 2002 [~~1998~~], for a municipality in

1 existence on that date, or on the date of incorporation for a
2 municipality incorporated after that date;

3 (2) an amount not greater than the base amount
4 determined for a similarly sized municipality in the same or an
5 adjacent county in which the certificated telecommunications
6 provider with the greatest number of access lines in the
7 municipality is the same for each municipality; or

8 (3) the total amount of the taxable telecommunications
9 receipts of the certificated telecommunications providers
10 providing service in [~~revenue received by~~] the municipality in 2002
11 [~~franchise, license, permit, and application fees from all~~
12 ~~certificated telecommunications providers in 1998~~].

13 (d) [~~The base amount for a municipality that was involved in~~
14 ~~litigation relating to franchise fees with one or more certificated~~
15 ~~telecommunications providers during any part of 1998 and that, not~~
16 ~~later than December 1, 1999, repeals any ordinance subject to~~
17 ~~dispute in the litigation, voluntarily dismisses with prejudice any~~
18 ~~claims in the litigation for compensation, and agrees to waive any~~
19 ~~potential claim for compensation under any franchise agreement or~~
20 ~~ordinance expired or in existence on September 1, 1999, is equal to,~~
21 ~~at the municipality's election:~~

22 (1) ~~an amount not to exceed the state average access~~
23 ~~line rate on a per category basis for the certificated~~
24 ~~telecommunications provider with the greatest number of access~~
25 ~~lines in that municipality multiplied by the total number of access~~
26 ~~lines located within the boundaries of the municipality on December~~
27 ~~31, 1998, including any newly annexed areas, or~~

1 ~~(2) an amount not to exceed 21 percent of the total~~
2 ~~sales and use tax revenue received by the municipality pursuant to~~
3 ~~Chapter 321, Tax Code. The amount does not include sales and use~~
4 ~~taxes collected under:~~

5 ~~(A) Chapter 451, 452, 453, or 454, Transportation~~
6 ~~Code, for a mass transit authority;~~

7 ~~(B) the Development Corporation Act of 1979~~
8 ~~(Article 5190.6, Vernon's Texas Civil Statutes), for a 4A or 4B~~
9 ~~Development Corporation;~~

10 ~~(C) Chapters 334 and 335, Local Government Code,~~
11 ~~or~~

12 ~~(D) Chapters 321, 322, and 323, Tax Code, for a~~
13 ~~special district, including health service, crime control,~~
14 ~~hospital, and emergency service districts.~~

15 ~~(e) A litigating municipality electing to dismiss with~~
16 ~~prejudice its claims in the litigation and repealing any ordinance~~
17 ~~subject to dispute in the litigation does not, by making the~~
18 ~~election, waive any defenses it may have to claims by other parties~~
19 ~~to the litigation. A municipality in litigation relating to~~
20 ~~franchise fees with one or more certificated telecommunications~~
21 ~~providers during any part of 1998 that does not make an effective~~
22 ~~election under Subsection (d) shall be governed by Subsection (b).~~

23 ~~(f)]~~ For the purpose of determining the base amount, in-kind
24 services or facilities provided to municipalities under existing
25 franchise agreements or ordinances by certificated
26 telecommunications providers shall be valued at one percent of the
27 total 2002 ~~[1998]~~ revenue from franchise, permit, license, and

1 application fees paid to the municipality under all applicable
2 telecommunications franchise agreements or ordinances, unless a
3 municipality can establish before the commission that those
4 services or facilities received by the municipality had a greater
5 value in 2002 [~~1998~~].

6 SECTION 4. Section 283.054, Local Government Code, is
7 amended to read as follows:

8 Sec. 283.054. EXISTING FRANCHISE AGREEMENTS AND
9 ORDINANCES. (a) Except as otherwise provided by this chapter,
10 this chapter does not affect the validity of a franchise agreement
11 or ordinance with a certificated telecommunications provider
12 executed before January 12, 2003 [~~1999~~] that remains in effect on
13 the effective date of this act. A municipality may continue to
14 enforce a franchise agreement or ordinance and to collect franchise
15 fees and other charges under that franchise agreement or ordinance
16 until the date on which the agreement or ordinance expires by its
17 own terms or is terminated in accordance with the terms of this
18 section. [~~A provider may elect to terminate a franchise agreement
19 or obligations under an existing ordinance as of the effective date
20 of the right-of-way fee rates adopted in accordance with the
21 commission's rules adopted under this chapter. A provider
22 terminating a franchise agreement or obligations under an existing
23 ordinance under this section shall become governed by this chapter
24 on the date of termination. A termination under this subsection
25 does not affect the calculation of the municipality's base amount
26 under Section 283.053. A certificated telecommunications provider
27 electing to terminate an existing franchise agreement or~~

1 ~~obligations under an ordinance under this section shall provide~~
2 ~~notice to the commission and the affected municipality not later~~
3 ~~than December 1, 1999.]~~

4 (b) If a franchise agreement or obligations under an
5 ordinance in a municipality expire [~~or are terminated under~~
6 ~~Subsection (a)~~] before the commission has determined the amounts to
7 be paid to a municipality, the affected certificated
8 telecommunications providers operating in the municipality shall
9 continue paying at the rates required under the terms of the expired
10 agreement or ordinance until the commission's determination and the
11 certificated telecommunications providers' implementation of
12 appropriate rates under this chapter.

13 (c) During the period in which a franchise agreement or
14 ordinance described by Subsection (a) is in effect, a certificated
15 telecommunications provider not subject to an existing franchise
16 agreement or ordinance that wants to construct facilities to offer
17 telecommunications services in the municipality shall pay
18 right-of-way fees that are competitively neutral and
19 nondiscriminatory, consistent with the charges of the most recent
20 agreement or ordinance between the municipality and the
21 certificated telecommunications provider serving the largest
22 number of access lines within the municipality. The provider shall
23 pay those fees for the duration of that agreement or ordinance or
24 until the right-of-way fees established by commission rule take
25 effect. If the existing franchise agreement or ordinance contains
26 a provision requiring in-kind services or facilities, the
27 certificated telecommunications provider not subject to an

1 existing franchise agreement or ordinance shall pay an amount equal
2 to an additional one percent of its total fees under the applicable
3 agreement or ordinance in lieu of any in-kind services or
4 facilities, if any, that otherwise are required under the terms of
5 the existing franchise agreement or ordinance. However, the
6 municipality may not require a certificated telecommunications
7 provider to provide any services or facilities without compensation
8 or at below-market rates for the right to use a public right-of-way
9 or to provide telecommunications services in the municipality. [~~On~~
10 ~~request of the certificated telecommunications provider not~~
11 ~~subject to an existing franchise agreement or ordinance, the~~
12 ~~commission shall convert the compensation under the existing~~
13 ~~franchise agreement or ordinance to a fee per access line on a~~
14 ~~competitively neutral and non-discriminatory basis, and the~~
15 ~~certificated telecommunications provider may elect to pay the~~
16 ~~municipality on a fee per access line basis rather than the manner~~
17 ~~of compensation provided under the existing franchise agreement or~~
18 ~~ordinance.~~

19 SECTION 5. Section 283.055, Local Government Code, is
20 amended to read as follows:

21 Sec. 283.055. DETERMINATION OF FEES BY COMMISSION. (a) A
22 municipality may not assess more than two levels of rates within the
23 municipality.

24 (b) A municipality may not assess more than a single rate to
25 taxable telecommunications receipts received from residential
26 customers.

27 (c) [Not later than November 1, 1999, the commission shall

1 ~~establish not more than three categories of access lines for~~
2 ~~statewide use.~~

3 ~~(b)]~~ Not later than February [~~March~~] 1, 2004 [~~2000~~], the
4 commission shall establish[~~+~~

5 ~~(1)]~~ for each municipality, not more than two maximum
6 levels of rates that the municipality may impose on the taxable
7 telecommunications receipts received within the municipality by a
8 certificated telecommunications provider providing service within
9 that municipality. [~~rates per access line by category for the use of~~
10 ~~the rights-of-way in that municipality; and~~

11 ~~(2) the statewide average of those rates per access~~
12 ~~line by category for each certificated telecommunications~~
13 ~~provider, if necessary.]~~

14 (d) [~~(c)~~] The rates when applied to the total taxable
15 telecommunications receipts received from within the municipality
16 by certificated telecommunications providers providing services
17 within that municipality [~~number of access lines by category in the~~
18 ~~municipality]~~ shall be equal to the base amount.

19 [~~(d) Not later than December 1, 1999, a municipality that~~
20 ~~wants to effect an allocation of the base amount over specific~~
21 ~~access line categories to be assessed rates shall notify the~~
22 ~~commission of the desired allocation. The commission shall~~
23 ~~establish an allocation of the base amount over the categories of~~
24 ~~access lines if a municipality does not file its proposed~~
25 ~~allocation by December 1, 1999. A municipality may request a~~
26 ~~modification of the commission's allocation not more than once~~
27 ~~every 24 months by notifying the commission and all affected~~

1 ~~certificated telecommunications providers in September of that~~
2 ~~year that the municipality wants to change the allocation for the~~
3 ~~next calendar year. A municipality's allocation shall be~~
4 ~~implemented unless, on complaint by an affected certificated~~
5 ~~telecommunications provider, the commission determines that the~~
6 ~~allocation is not just and reasonable, is not competitively~~
7 ~~neutral, or is discriminatory.]~~

8 (e) Rates imposed under this section [~~and the allocation~~
9 ~~among certificated telecommunications providers]~~ must be exercised
10 in a competitively neutral manner, may not unduly impair
11 competition, must be non-discriminatory, and must comply with state
12 and federal law. [~~The commission shall determine the applicable~~
13 ~~rates for each municipality for each category, taking into account~~
14 ~~the allocation under Subsection (d) and the type, use, and function~~
15 ~~of access lines.]~~

16 (f) Certificated telecommunications providers shall pay to
17 the municipality a quarterly amount calculated monthly based on the
18 [~~access line]~~ rates established by the commission under this
19 section and the taxable telecommunications receipts received
20 within the municipality by a certificated telecommunications
21 provider providing service within that municipality [~~number of~~
22 ~~access lines as reflected in the reports filed under subsection~~
23 ~~(j)]]. The providers shall make the quarterly payment not later than
24 45 days after the end of the quarter.~~

25 (g) [~~Beginning 24 months after the date the commission~~
26 ~~establishes rates per access line, the commission shall annually~~
27 ~~adjust the rates per access line for each municipality by an amount~~

1 ~~equal to one-half the annual change, if any, in the consumer price~~
2 ~~index. At that time, the commission shall provide each~~
3 ~~certificated telecommunications provider and municipality with the~~
4 ~~adjusted monthly rates for each category of access line.~~

5 ~~(h) On an annual basis, an affected municipality may provide~~
6 ~~notice to the commission to decline all or any portion of any~~
7 ~~increase in the per category access line rates.~~

8 ~~(i) A certificated telecommunications provider may not be~~
9 ~~required to remit a right-of-way fee to a municipality on those~~
10 ~~access lines that have been resold, leased, or otherwise provided to~~
11 ~~another certificated telecommunications provider, if the~~
12 ~~underlying certificated telecommunications provider supplying~~
13 ~~those services or facilities has been furnished with adequate proof~~
14 ~~that the provider of services to the end-use customer will directly~~
15 ~~remit to the municipality a right-of-way fee based on those access~~
16 ~~lines.~~

17 ~~(j) On a quarterly basis, each certificated~~
18 ~~telecommunications provider shall file a report with the commission~~
19 ~~that shows the number of access lines, including access lines by~~
20 ~~category, that the provider has within each municipality at the end~~
21 ~~of each month of the quarter. The provider shall include with the~~
22 ~~report a certified statement from an authorized officer or duly~~
23 ~~authorized representative of the provider stating that the~~
24 ~~information contained in the report is true and correct to the best~~
25 ~~of the officer's or representative's knowledge and belief after~~
26 ~~inquiry. On request and subject to the confidentiality protections~~
27 ~~of Section 283.005, each certificated telecommunications provider~~

1 shall provide each affected municipality with a copy of the report
2 required by this subsection.

3 ~~(k) On request of the commission and to the extent~~
4 ~~available, the report required by Subsection (j) shall specifically~~
5 ~~identify access lines that are provided by means of resold services~~
6 ~~or unbundled facilities to another certificated telecommunications~~
7 ~~provider who is not an end-use customer and the identity of the~~
8 ~~certificated telecommunications, providers obtaining the resold~~
9 ~~services or unbundled facilities to provide services to end-use~~
10 ~~customers. A provider may not include in its monthly count of~~
11 ~~access lines and is not required to remit a right-of-way fee to the~~
12 ~~municipality on access lines that are resold, leased, or otherwise~~
13 ~~provided to another certificated telecommunications provider if~~
14 ~~the provider receives adequate proof that the provider leasing or~~
15 ~~purchasing the access lines will include the access lines in its~~
16 ~~monthly count and remit payment on those access lines to the~~
17 ~~municipality.~~

18 ~~(l) The commission may use a report required under~~
19 ~~Subsection (j) only to verify the number of access lines that serve~~
20 ~~premises within the municipality.~~

21 ~~(m)]~~ Notwithstanding any other provision of this chapter,
22 payment by a certificated telecommunications provider that
23 complies with the terms of an unexpired franchise agreement or
24 right-of-way ordinance that applies to the provider satisfies the
25 payment attributable to the provider required by this chapter.

26 (h) ~~[(n)]~~ A municipality may not demand or require from a
27 certificated telecommunications provider services, facilities, or

1 goods without compensation or at below-market rates.

2 (i) [~~(e)~~] A certificated telecommunications provider
3 shall, to the extent required, implement commission established
4 [~~access-line~~] rates not later than the 90th day after the date the
5 commission establishes the [~~access-line~~] rates under this chapter.

6 (j) Notwithstanding any other provision of this section, a
7 municipality and a certificated telecommunications provider may
8 mutually agree to a different method for compensating the
9 municipality for the use of public right-of-way as long as the
10 amount of compensation paid to the municipality is not less than the
11 amount that otherwise would be paid to the municipality.

12 SECTION 6. This Act takes effect September 1, 2003.